

FOR THE
DISTRICT OF MASSACHUSETTS

In Re:

*

*

Chapter 7

Barry Wisner Chapin

*

Case No. 20-10324

Debtor

*

**MOTION OF BOARD OF TRUSTEES OF 32-34 FAIRFIELD STREET
CONDOMINIUM TRUST FOR RELIEF FROM AUTOMATIC STAY**

Now comes Creditor, Board of Trustees of 32-34 Fairfield Street Condominium Trust (hereinafter “Creditor”) and moves this Honorable Court for relief from the automatic stay provisions of 11 U.S.C. Section 362(1) and makes application for permission to proceed in rem for the debt against the Unit to establish rights of priority in the security and to enforce its secured rights in the collateral. In support of this motion, Creditor states as follows:

1. On February 4, 2020, the Debtor filed a petition under Chapter 7 of the United States Bankruptcy Code for the District of Massachusetts.
2. Creditor/Movant is the Managing Board of a condominium association which association is the organization of unit owners of 32-34 Fairfield Street Condominium (the “Condominium”), a Condominium duly established pursuant to Massachusetts General Laws Chapter 183A by the recording of a Master Deed in the Suffolk County Registry of Deeds.
3. Debtor is the owner of a unit known as Unit 34-2, 32-34 Fairfield Street Condominium, 32 Fairfield Street, Boston, Massachusetts in the Condominium.
4. Creditor/Movant is the holder of a statutory lien for unpaid common area assessments attributable to the Unit pursuant to Massachusetts General Laws Chapter 183A, §6, which lien arises as of the date of the recording of the Master Deed.

5. Accordingly, Creditor's lien is a statutory lien which is not subject to avoidance pursuant to 11 U.S.C. §545.

6. Said lien has a limited priority over the first mortgage to the extent of six months prior to the institution of an action; thereafter, except for municipal obligations and the mortgage, the lien is superior to all other encumbrances on the unit.

7. As of the date of the filing of this Motion, approximately, \$1,830.00 is due and owing on the Unit, exclusive of attorney's fees and costs incurred in connection with the filing of this motion.

8. According to the Debtor's schedules, at the time of the filing of this case, there are approximately the following encumbrances on the subject property:

<u>Name of Creditor</u>	<u>Type of Lien</u>	<u>Amount Owed</u>
Hingham Institute for Savings	First Mortgage	\$523,381.00
32-34 Fairfield Street Condominium	Statutory Lien	\$ 1,830.00
Total Secured Encumbrances		\$525,211.00

The Debtor has listed the City of Boston as having a secured claim but does not list the amount of the claim. The Debtor has listed on "Schedule E/F: Creditors who Have Unsecured Claims", the Internal Revenue Service with a claim in the amount of \$327,000.00 and the Massachusetts Department of Revenue with a claim in the amount of \$25,000.00. In addition, according to the records at the Suffolk Registry of Deeds, there is a Notice of Child Support Lien recorded on May 31, 2019 by the Massachusetts Department of Revenue in the amount of \$41,307.50.

9. According to the Debtor's schedules, at the time of the filing of this case, the fair market value of the subject property is \$813,700.00. In Movant's opinion, the liquidation value of the subject property would be \$760,618.44, calculated as the fair

market value less a reasonable realtor's fee of \$48,822.00 (6%); deed stamps (\$3,709.56) and anticipated costs incurred for a real estate closing of \$550.00.

10. Annexed hereto is a ledger for Debtor's unit account.

11. As a result of this motion, attorney's fees of approximately \$550.00 and costs in the amount of \$181.00 have accrued in addition to the amount set forth in Paragraphs 7 and 8 above. This figure may increase as additional attorney's fees and costs continue to accrue.

12. The total post-petition arrearage through the anticipated hearing on this motion would also include all additional monthly common area assessments currently in the amount of \$328.00 with a monthly late fee charge of \$25.00. Pursuant to Massachusetts General Laws Chapter 183A, §6, the post-petition arrearage would also include any additional expenses, attorney's fees and costs that accrue from the date of the filing of this motion through the date of the hearing.

13. The Debtor has stated that he intends to retain his interest in the Unit.

14. Debtor has filed a Declaration of Homestead with the Registry in Book 55381, Page 304.

15. Creditor/Movant is seeking relief from the automatic stay solely for the purpose of establishing its priority lien **in rem** in state court.

16. The First Mortgagee has filed a Motion for Relief which, if allowed, and subsequently moves to foreclose on the unit at such time as the moratorium on foreclosures is lifted, Creditor will have lost its priority position if it has not established the same through the statutory process set forth in Massachusetts General Laws Chapter 183A, §6.

WHEREFORE, the Board of Trustees of 32-34 Fairfield Street Condominium

Trust respectfully requests that this Court enter an Order:

1. Granting the Board of Trustees of 32-34 Fairfield Street Condominium Trust relief from the automatic stay to allow the 32-34 Fairfield Street Condominium to exercise its rights as a Massachusetts Condominium Association under State Law; and
2. Providing such other relief as is just and equitable.

BOARD OF TRUSTEES OF 32-34 FAIRFIELD STREET
CONDOMINIUM TRUST
By its counsel,

/s/ Ellen A. Shapiro
Ellen A. Shapiro, Esquire (BBO#454000)
eshapiro@meeb.com
Marcus, Errico, Emmer & Brooks, PC
45 Braintree Hill Office Park, Suite 107
781-843-5000

Dated: April 30, 2020

UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF MASSACHUSETTS

In Re:	*	Chapter 7
Barry Wisner Chapin	*	Case No. 20-10324
Debtor	*	

**ORDER GRANTING BOARD OF TRUSTEES OF 32-34 FAIRFIELD STREET
CONDOMINIUM TRUST'S RELIEF FROM THE AUTOMATIC STAY**

Upon the Motion by the Board of Trustees of 32-34 Fairfield Street Condominium Trust for Relief from Automatic Stay, which Motion came before me, and after due and proper notice was given, and after full consideration, it is hereby ORDERED:

The Board of Trustees of 32-34 Fairfield Street Condominium Trust is hereby granted immediate relief from the automatic stay provisions of 11 U.S.C. §362(a) to exercise its rights and remedies in rem as a Massachusetts Condominium Association under applicable law, to establish its priority statutory lien on the certain property known as **32 Fairfield Street, Unit 34-2, 32-34 Fairfield Street Condominium, Boston, Massachusetts 02116.**

Dated:

Honorable
U.S. Bankruptcy Judge

Owner Ledger

Barry Chapin
34 Fairfield Street, #2
Boston, MA 02116

Date: 04/30/20
Owner Code: 34-02
Property: 03
Unit: 34-02
Status: Current
Fees: 328.00
Deposit: 0.00
Move In Date: 12/01/15
Move Out Date:
Due Day: 1
Tel# (O) (508) 616-9660
Tel# (H) (508) 662-9600

Date	Description	Charges	Payments	Balance
	Balance Forward			1,274.00
01/01/19	Fees	328.00		1,602.00
01/02/19	chk# 6626 Reversed by ctrl#287433		262.00	1,340.00
01/11/19	Returned check charge	20.00		1,360.00
01/11/19	Returned check charge	20.00		1,380.00
01/11/19	chk# 6606 NSF receipt Ctrl# 285009		-262.00	1,642.00
01/11/19	chk# 6626 NSF receipt Ctrl# 286791		-262.00	1,904.00
01/16/19	Late Fee	25.00		1,929.00
02/01/19	Fees	328.00		2,257.00
02/18/19	Late Fee	25.00		2,282.00
03/01/19	Fees	328.00		2,610.00
03/05/19	chk# 6666 Reversed by ctrl#291836		262.00	2,348.00
03/12/19	Returned check charge	20.00		2,368.00
03/12/19	chk# 6666 NSF receipt Ctrl# 290909		-262.00	2,630.00
03/18/19	Late Fee	25.00		2,655.00
04/01/19	Fees	328.00		2,983.00
04/01/19	chk# 6682		262.00	2,721.00
04/16/19	Late Fee	25.00		2,746.00
05/01/19	Fees	328.00		3,074.00
05/16/19	Late Fee	25.00		3,099.00
06/01/19	Fees	328.00		3,427.00
06/06/19	Legal Fee - Shapiro invoice #55070	395.00		3,822.00
06/11/19	Legal Fee - Shapiro pre-bill worksheet	150.00		3,972.00
06/13/19	chk# 347962		3,972.00	0.00
07/01/19	Fees	328.00		328.00
07/01/19	chk# 6718 Reversed by ctrl#300819		262.00	66.00
07/16/19	Late Fee	25.00		91.00
07/17/19	Returned check charge	20.00		111.00
07/17/19	chk# 6718 NSF receipt Ctrl# 299107		-262.00	373.00
08/01/19	Fees	328.00		701.00
08/16/19	Late Fee	25.00		726.00
09/01/19	Fees	328.00		1,054.00
09/16/19	Late Fee	25.00		1,079.00
10/01/19	Fees	328.00		1,407.00
10/08/19	Legal Fee - Shapiro invoice #56091	120.00		1,527.00
10/16/19	Late Fee	25.00		1,552.00

CONTINUED

Owner Ledger

Barry Chapin
34 Fairfield Street, #2
Boston, MA 02116

Date: 04/30/20
Owner Code: 34-02
Property: 03
Unit: 34-02
Status: Current
Fees: 328.00
Deposit: 0.00
Move In Date: 12/01/15
Move Out Date:
Due Day: 1
Tel# (O) (508) 616-9660
Tel# (H) (508) 662-9600

Date	Description	Charges	Payments	Balance
	Balance Forward			1,552.00
11/01/19	Fees	328.00		1,880.00
11/07/19	Legal Fee - Shapiro invoice #56364	300.00		2,180.00
11/15/19	Late Fee	25.00		2,205.00
12/01/19	Fees	328.00		2,533.00
12/02/19	chk# 6796 Reversed by ctrl#312360		262.00	2,271.00
12/03/19	Legal Fee - Shapiro invoice #56645	150.00		2,421.00
12/10/19	Legal Fee - Shapiro wrap up fee (invoice	200.00		2,621.00
12/12/19	chk# 356111		2,530.00	91.00
12/13/19	Returned check charge	20.00		111.00
12/13/19	chk# 6796 NSF receipt Ctrl# 311337		-262.00	373.00
12/30/19	chk# 6803 Reversed by ctrl#312472		262.00	111.00
12/31/19	Returned check charge	20.00		131.00
12/31/19	chk# 6803 NSF receipt Ctrl# 312434		-262.00	393.00

Current	30 Days	60 Days	90 Days	Amount Due
0.00	0.00	0.00	393.00	393.00

Statement

Prepared By: Modica Associates
131 Park Drive #G1
Boston, MA 02215

Statement Period	Statement Date
12/31/2019 - 4/1/2020	4/30/2020

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Barry Chapin
34 Fairfield Street, #2
Boston, MA 02116

Deposits Held	Previous Balance	Balance Due
\$0.00	\$0.00	\$1,730.00

Account number 00378930
32-34 Fairfield Street Condominium - 34-02

Statement

Date	Memo	Increase	Decrease	Balance
12/31/2019	Balance Forward - Condominium Fee	\$262.00		\$262.00
12/31/2019	Balance Forward - legal fees	\$91.00		\$353.00
12/31/2019	Balance Forward - Bank Fees	\$40.00		\$393.00
1/1/2020	Association fee	\$328.00		\$721.00
2/1/2020	Association fee	\$328.00		\$1,049.00
2/19/2020	Late Fee	\$25.00		\$1,074.00
3/1/2020	Association fee	\$328.00		\$1,402.00
4/1/2020	Association fee	\$328.00		\$1,730.00

4/15/2020	Draft & file Notice of Appearance and Request for Service	\$100.00	\$1,830.00
4/30/2020	Draft & file Motion for Relief from Automatic Stay	\$550.00	\$2,380.00
4/30/20	Filing Fee for Motion for Relief	\$181.00	\$2,561.00

Date: 05/01/2020

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Tab33 Detail Work-In-Process Report
MARCUS, ERRICO, EMMER & BROOKS, P.C.

Primary Timekeeper: 32 Ellen Shapiro

Client: 6020.001 32-34 Fairfield Street Condominium Trust Boston, M 32-34 Fairfield

Contact: Modica Associates
Email: team@modicaassociates.com

CHAPIN, BARRY UNIT 2

Primary Timekeeper: 32 EAS Category: 1 UNASSIGNED
 Secondary Timekeeper: 1 Draft Template: Draft Rate Code: 1
 Originating Timekeeper: 33 GS Final Template: Final Date Opened: 04/20/2020
 Previous Balance: 0.00

Date	Tmkr	Cat	Src	H P	T X	B C	R C	Tcode	Ref #	Rate	Units	Hours Worked	Hours to Bill	Write-Up/ Down Hrs	Amount	Write-Up/ Down Amt	Description
Fees																	
04/21/2020	32 EAS	1				8		281	1	0.00		0.00	0.00		125.00	125.00	Draft Notice of Appearance and Request for Notice. File same with Bankruptcy Court and serve parties.
04/30/2020	32 EAS	1				8		229	2	0.00		0.00	0.00		550.00	550.00	Review bankruptcy schedules, review account history, Prepare and file with Bankruptcy Court with service on parties, Draft Motion for Relief from Automatic Stay
Billable Total: 32 Ellen Shapiro												0.00	0.00		675.00		
Fee Write-Up:														0.00		675.00	
Total Billable Fees												0.00	0.00		675.00		
Total Fee Write-Up														0.00		675.00	
Expenses																	
05/01/2020	32 EAS					712			1						181.00		Bankruptcy filing fee for Motion for Relief
Total Billable Expenses															181.00		

RECAP

Fees:	675.00	Previous Balance:	0.00		
Expenses:	181.00	Payments/Credits:	0.00		
Advances:	0.00				
Total WIP:	856.00	Balance Due:	0.00	Total:	856.00
A/R:	0-30	31-60	61-90	91-120	121-180
	0.00	0.00	0.00	0.00	0.00
					181+

UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF MASSACHUSETTS

In Re: *
* Chapter 7
Barry Wisner Chapin * Case No. 20-10324
Debtor *

CERTIFICATE OF SERVICE

I, Ellen A. Shapiro, attorney for the Board of Trustees of 32-34 Fairfield Street Condominium Trust hereby certify that on April 30, 2020, I electronically filed the foregoing Motion of Board of Trustees of 32-34 Fairfield Street Condominium Trust for Relief from Automatic Stay with the United States Bankruptcy Court of the District of Massachusetts using the CM/ECF System. I served the foregoing documents on the following CM/ECF participants:

David G. Baker, Esquire on behalf of the Debtor at david@bostonbankruptcy.com
Christopher M. Condon, Esquire on behalf of Harold B. Murphy at ccondon@murphyking.com
Kathleen R. Cruickshank, Esquire on behalf of Harold B. Murphy at kcruickshank@murphyking.com
Elizabeth Dailey, Esquire on behalf of Freedom Mortgage Corporation at bd@dgandl.com
Kevin Gaughen, Jr., Esquire on behalf of Hingham Institute for Savings at kevingaughenjr@gaughenlane.com
Dean Lennon, Esquire on behalf of Carlton Gardens Condominium at dlennon@meeb.com
Reneau J. Longoria, Esquire on behalf of Freedom Mortgage Corporation at rjl@dgandl.com
Richard T. Mulligan, Esquire on behalf of Freedom Mortgage Corporation at mabk@harmonlaw.com
Richard B. Reiling, Esquire on behalf of Linda Reyes-Flores at Reilinglaw@aol.com
Harold B. Murphy, Esquire at bankruptcy@murphyking.com
John Fitzgerald, Esquire at USTPRegion01.BO.ECF@USDOJ.GOV

I certify that I have mailed by first class mail, postage prepaid the documents electronically filed with the Court on the following non-CM/ECF participants as listed on the attached Notice List.

Board of Trustees of
32-34 Fairfield Street Condominium Trust
MARCUS ERRICO EMMER BROOKS
By its counsel,

/s/ Ellen A. Shapiro
Ellen A. Shapiro, Esq. (BBO#454000)
eshapiro@meeb.com
45 Braintree Hill Office Park, Suite 107
Braintree, MA 02184
(781) 843-5000

NOTICE LIST

City of Boston
Treasury Department
Bankruptcy Coordinator
One City Hall Plaza
Boston, MA 02201

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

MDOR Child Support Unit
100 Cambridge Street
Boston, MA 02114-2509

Massachusetts Department of Revenue
PO Box 9564
Boston, MA 02114-9564

Barry Wisner Chapin
34 Fairfield Street, Apt. 2
Boston, MA 02116-2587

Board of Trustees of
32-34 Fairfield Street Condominium Trust
MARCUS ERRICO EMMER BROOKS
By its counsel,

/s/ Ellen A. Shapiro
Ellen A. Shapiro, Esquire
eshapiro@meeb.com
BBO#454000
45 Braintree Hill Office Park, Suite 107
Braintree, MA 02184
(781) 843-5000

Dated: April 30, 2020